

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, et al.,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, et al.,

Defendants.

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CAUSE NUMBER: 3:11-cv-0207-N

**DEFENDANTS' RESPONSE TO PLAINTIFFS' EMERGENCY MOTION
TO EXTEND DATE FOR REBUTTAL EXPERT DISCLOSURE AND REPORTS**

TO THE HONORABLE COURT:

Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Volvo Group North America, LLC f/k/a Volvo Trucks North America; Strick Trailers, LLC; John Fayard Moving & Warehouse, LLC; and Dolphin Line, Inc. (collectively "Defendants"), file this, their Response to Plaintiffs' Emergency Motion to Extend Date for Rebuttal Expert Disclosures and Reports, and for such would show as follows:

1. The deadline for rebuttal reports was set for January 3, 2014 (contrary to Plaintiffs' allegation that Saturday, January 4, 2014 was the deadline) by the Court order on November 8, 2013. Defendants' expert report deadline was also set for December 20, 2013 at that time. Defendants timely provided expert reports on December 20, 2013. All parties knew that time was of the essence to conduct expert discovery, yet Plaintiffs waited ten days before requesting their experts conduct some "rebuttal" work by inspecting certain vehicles in Defendants' possession. Letter dated December 30, 2013 from Aubrey "Nick" Pittman, APP at 1-2. At 1:08 a.m. on December 31, 2013, the Toyota Defendants responded that they would

explore what available logistical options existed for doing so, if any. December 31, 2013 email correspondence from Kurt C. Kern, APP at 3. Later that same day, the Toyota Defendants offered that the 4Runner and Volvo from the crash test performed by Toyota's experts could be made available for inspection in Phoenix, Arizona on Friday, January 3, 2014. December 31, 2013 email correspondence from David P. Stone, APP at 4-5. Plaintiffs never responded to this offer. *See* January 2, 2014 email correspondence from David P. Stone, APP at 6. Now, the day rebuttal expert reports are due, Plaintiffs, without conferring with Defendants, filed their Emergency Motion to Extend Date for Submission of Rebuttal Reports.

2. No extension of the deadline for rebuttal reports is warranted under the circumstances. Plaintiffs have had knowledge of the deadline for almost two months. Since before that time, they obviously had knowledge of the Christmas and New Year's holiday. Defendants timely provided their expert reports on December 20, 2013, two weeks before the rebuttal report deadline yet Plaintiffs essentially did nothing in response thereto. Further, no extension is appropriate in light of Plaintiffs' intransigent position with respect to Defendants' requested extensions at the January 2, 2014 hearing. Finally, Plaintiffs' argument that they received the VGNA expert reports late appears to be due to the closing of their own office during normal business hours and therefore unpersuasive. A review of the U.S. Postal Service tracking information shows that the expert reports were served on Friday, December 20, 2013 via certified mail, an accepted method of service under the rules, and delivery was attempted on Mr. Pittman's office at 12:32 p.m., during normal business hours, on the following Monday, December 23, 2013. APP 17-18. Nonetheless, Defendants have advised Plaintiffs that they would agree to a short extension, if the extension was accompanied by proper assurances that it would not prevent an orderly expert deposition schedule or require them to depose an expert

before rebuttal reports are provided. January 3, 2014 email correspondence, APP at 10. Specifically, the Toyota Defendants have advised Plaintiffs, and the other defendants have agreed (APP at 14-16), that they would agree to the following:

- 1) An extension of the deadline for rebuttal reports to January 10, 2014;
- 2) Dr. Burton be made available for deposition on January 14 or 15, 2014;
- 3) Mr. Friedman be made available for deposition on January 21 and 22, 2014 for 16 hours of deposition time;
- 4) Dr. Stephenson be made available for deposition on January 23 and 24, 2014 for 16 hours of deposition time;
- 5) Mr. Vick be made available for deposition on January 27 or 28, 2014; and
- 6) The Toyota Defendants' biomechanical expert, Dr. Corrigan, may be made available for deposition up to and including March 3, 2014.

Despite a detailed telephone conference with Plaintiffs' counsel on January 3, 2014, Plaintiffs have rejected the Toyota Defendants' proposal that was agreed upon by all Defendants. Because a last minute extension of the rebuttal expert deadline that Plaintiffs have long been aware of could result in Plaintiffs' experts issuing reports after their depositions or otherwise operate to disrupt the orderly completion of expert depositions, Plaintiffs' motion should be denied.

WHEREFORE, PREMISES CONSIDERED, Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Volvo Group North America, LLC f/k/a Volvo Trucks North America; Strick Trailers, LLC; John Fayard Moving & Warehouse, LLC; and Dolphin Line, Inc. request the Court deny Plaintiffs Motion to Extend Time to File Expert Rebuttal Reports, and for such other and further relief to which they may show themselves to be entitled.

Respectfully submitted,

/s/ David P. Stone

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 3rd day of January, 2014.

/s/ David P. Stone